S.B. CIVIL WRIT PETITION NO.5297/2004
Om Prakash vs. State of Rajasthan and others.

Date : 25.1.2005

HON'BLE MR. PRAKASH TATIA, J.

Mr. S.P. Sharma, for the petitioner.

Mr. B.K. Vyas, for respondent no.4
Mr. S.N. Tiwari, Dy.G.A. For respondents no.1 to 3.

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Heard learned counsel for the parties.

The petitioner is aggrieved against the order dated 19.10.2004 by which the Superintending Engineer, Irrigation Division, Sri Vijaynagar allowed the appeal of respondent no.4 and set aside the order of Executive Engineer dated 8.6.2004 by which the Executive Engineer is alleged to have regularised the Naka at Kila NO.25.

It is not in dispute that the naka at Kila No.25 was opened by the petitioner without any permission of the competent authority or after obtaining any order from the competent authority. When the notice was served upon the petitioner for illegally opening the naka, the petitioner prayed that his naka may be regularised. The petitioner deposited certain amount for regularisation of the naka. The appellate court found that the order of Executive Engineer is illegal and the naka at kila no.25 was opened without following the procedure. Since it is not in dispute that the naka at kila no.25 was opened without any

authority of law and the procedure was also not followed even for continuing the said naka, therefore, no illegality has been committed by the appellate authority in passing the order dated 19.10.2004.

However, if the petitioner has any grievance that he is not receiving proper irrigation to his agriculture land after partition of his land, then he can move appropriate application before the competent authority for getting irrigation facility. But no fault can be found in the order dated 19.10.2004 so as to call for interference in the same under Article 227 of the Constitution of India.

Consequently, this writ petition, having no merit, is hereby dismissed.

However, the petitioner will be free to move the application for getting irrigation facility to his land before the competent authority who will decide the same after hearing all the concerned parties in accordance with the Rules framed for this purpose.

(PRAKASH TATIA), J.

S.Phophaliya